


# BOARD OF COUNTY COMMISSIONERS

## INTER-OFFICE MEMORANDUM

Page 1 of 2

To: Vincent Long  
Assistant County Administrator

From:  Herbert W.A. Thiele, Esq.  
County Attorney

Date: May 5, 2005

Subject: Agenda Item # 21- Consideration of Public Information Initiatives

The following memorandum relates to issues raised in discussion of the above referenced agenda item during the April 26, 2005 meeting of the Board of County Commissioners. By way of background, the County's Franchise Agreement with Comcast Cablevision of Tallahassee, Inc., requires Comcast to make a government access channel available to the County for cablecasting County meetings and workshops. The agenda item under discussion proposed expanding the County's use of the channel to include other informational pieces in addition to County meetings. The particular concern raised at the County Commission meeting was that some of the subject-matter of the proposed additional programming might violate Federal Communications Commission (FCC) regulations requiring broadcasters to provide equal time to all qualified candidates during elections for public office.

FCC regulations require that if a "cable television system operator" allows a legally qualified candidate access to its channels and facilities, then it must also allow equal access to opposing candidates.<sup>1</sup> For the purposes of this regulation a "cable operator" as "a person or group of persons (a) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (b) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system."<sup>2</sup> In this case, Comcast is the cable operator.

The FCC has determined that the equal time provisions only apply to channels under the "exclusive control" of the cable operator.<sup>3</sup> In order for the cable operator to exercise exclusive control over the channel, it must retain editorial control over the programming.<sup>4</sup> Federal rules controlling cable franchising agreements also govern the government access to channels under these agreements and the control that cable operators may exert over such access. Under the federal statutes, the cable operator may not exercise any editorial control over governmental use

<sup>1</sup> See 47 U.S.C. §315(a)(2) and 47 C.F.R. §205(a).

<sup>2</sup> 47 C.F.R. §76.5(ee).

<sup>3</sup> In re Complaint of Albert J. Zawicki against Dundalk Community College Cable Channel 6, 1986 WL 290830 (F.C.C.), 60 Rad. Reg. 2d (P & f) 1657.

<sup>4</sup> Id.

of channel capacity provided pursuant to the franchising agreement by the operator to the government.<sup>5</sup>

Since the use of the channel to cablecast County meetings is a provision of the County's Franchise Agreement with the operator, Comcast may not exercise any editorial control over the use of the channel when airing agreed upon programming (i.e. workshops and meetings). Since Comcast cannot exert editorial control the over channel during the times which it has agreed to allow the County to cablecast meetings, and since the County is not a "cable operator," the equal time requirement is not applicable to this channel when in use by the County.<sup>6</sup>

Either an amendment to the Franchise Agreement or other mechanism would be required to increase the County's access to the channel beyond its current use, as under the agreement Comcast has reserved all rights to the channel when it is not being used to cablecast County workshops and meetings.<sup>7</sup> However, should the agreement be amended to allow the County to use the channel to cablecast programs other than County workshops and meetings, then these programs would also be exempt from the equal time requirement.

Should you have further questions please do not hesitate to contact our office.

HWAT/lmy

cc: Parwez Alam, County Administrator  
Jenny Khoen, Public Information ✓

<sup>5</sup> 47 U.S.C.A. §531(e).

<sup>6</sup> Supra note 3

<sup>7</sup> "Franchise Agreement Between Leon County, Florida and Comcast Cablevision of Tallahassee, Inc." Section X, Part F.